

STATE OF MICHIGAN  
COURT OF APPEALS

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In the Matter of KALIN MICHAEL RATHE,  
Minor.

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DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

FREDERICK JAMES MULLIGAN,

Respondent-Appellant,

and

HEATHER RATHE,

Respondent.

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UNPUBLISHED

February 1, 2007

No. 269736

Calhoun Circuit Court

Family Division

LC No. 04-004428-NA

Before: Borrello, P.J., and Jansen and Cooper, JJ.

PER CURIAM.

Respondent-appellant appeals as of right from the trial court order terminating his parental rights to the minor child under MCL 712A.19b(3)(c)(i), (g), and (j). We affirm.

The trial court did not clearly err by finding that statutory grounds for termination were established by clear and convincing evidence. MCR 3.977(J); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). The primary condition of adjudication was respondent-appellant's involvement in drugs. The minor child came to the attention of the Department of Human Services in December 2004 when respondent-appellant was arrested for possession of cocaine. In May 2005, he was convicted by plea of delivery of less than 50 grams of cocaine. During the five months following the initial disposition in these child protective proceedings, until his incarceration in July 2005,<sup>1</sup> respondent-appellant did not participate in significant counseling and provided only four of 16 drug screens, one of which was positive for cocaine. He was referred

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<sup>1</sup> Respondent-appellant remained free on bond while charges were pending, and after the conviction until his sentencing in July 2005.

for a substance abuse assessment but did not follow through, and failed to contact the Fatherhood Male Involvement Program, which provides parenting classes and support groups, as well as housing and employment assistance, until shortly before his incarceration. Thus it is clear that respondent-appellant did not address or rectify his involvement with drugs at any time before his incarceration.

Despite evidence of respondent-appellant's participation in several services provided in jail, including a 12-step substance abuse class, we conclude that the trial court did not clearly err by finding that the conditions of adjudication continued to exist. MCL 712A.19b(3)(c)(i). Respondent-appellant's counselor, Paul Fatato, noted that respondent-appellant experienced forced sobriety while incarcerated, but that without the constraints of jail, would have a greatly increased likelihood of relapse if he had not made the changes that were needed. Respondent-appellant's own testimony reflected a continued failure to take responsibility for his actions, reflected in various excuses for his failure to comply with the service plan in the time before his incarceration, including the particularly suspect explanation that he did not comply with services because he was trying to provide the police with information concerning drug activity. Given evidence of respondent-appellant's failure to significantly comply with the parent-agency agreement in the five months preceding his incarceration, his continuing failure to take responsibility for his actions, and the forced nature of his sobriety while incarcerated, the record adequately supports the trial court's determination that the conditions of adjudication continued to exist.

The trial court also did not clearly err by finding that there was no reasonable likelihood that the conditions of adjudication would be rectified within a reasonable time considering the age of the child. MCL 712A.19b(3)(c)(i). Mr. Fatato testified that respondent-appellant's progress during his five sessions of therapy was very limited at best. In order to be reunited with Kalin, respondent-appellant, after released, would need to enroll in an outpatient substance abuse program, show strong involvement with support groups, have a sponsor and work a 12-step program. This process would take up to a year or longer. He would also need to address childhood issues, a process that could take up to six months. Respondent-appellant's psychological evaluation indicated that his prognosis for improvement was poor. The evaluator felt that he would have difficulty learning from experience and taking responsibility, would tend to externalize blame, and would be unlikely to follow through on a consistent basis and would make excuses for not doing so. Overall, the evidence presented a picture of an uncertain prospect of rehabilitation, which could only be shown over the passage of approximately one year or more from the date of respondent-appellant's release from incarceration, which was anticipated in April 2006. Under these circumstances, the trial court did not clearly err by finding that there was no reasonable likelihood that the conditions of adjudication would be rectified within a reasonable time considering the age of the child.

In addition, the trial court did not clearly err by finding that respondent-appellant failed to provide proper care and custody for the minor child and that there was no reasonable likelihood that he would be able to do so within a reasonable time considering the age of the child, MCL 712A.19b(3)(g), and that there was a reasonable likelihood that the child would be harmed if returned to respondent-appellant, MCL 712A.19b(3)(j). Respondent-appellant failed to provide proper care and custody of the child by engaging in drug activity resulting in his incarceration. The same evidence previously discussed equally indicates that there is no reasonable likelihood

that respondent-appellant will be able to provide proper care and custody for Kalin within a reasonable time, MCL 712A.19b(3)(g), and that the child is likely to be harmed if returned to respondent-appellant, MCL 712A.19b(3)(j).

Finally, the trial court properly found that termination of respondent-appellant's parental rights was not clearly contrary to the best interests of the child. MCL 712A.19b(5). We are keenly aware that there is a strong bond between respondent-appellant and the minor child. Moreover, events subsequent to the termination order suggest that Kalin may not be adopted by his paternal relatives as had been contemplated. However, respondent-appellant has not demonstrated the successful resolution of his drug involvement, and the evidence indicated a poor prognosis for improvement. While the result of this case is tragic, there is little evidence to suggest that delaying permanency for the minor child for at least another year, while awaiting respondent-appellant's uncertain rehabilitation, would ultimately result in a better outcome. Under these circumstances, we are not left with a definite and firm impression that the trial court erred in its best interests determination, *In re Terry*, 240 Mich App 14, 22; 610 NW2d 563 (2000), nor can we conclude that the decision of the trial court was "more than just maybe or probably wrong. . . ." *In re Sours*, 459 Mich 624, 633; 593 NW2d 520 (1999). The evidence indicated that the child's best interests require a stable family unit, which respondent-appellant unfortunately is not in a position to provide.

Affirmed.

/s/ Stephen L. Borrello  
/s/ Kathleen Jansen  
/s/ Jessica R. Cooper